

APPEAL NO. 040424  
FILED APRIL 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 3, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 6th, 7th, 8th, 9th, and 10th quarters. The appellant (carrier) appeals the hearing officer's decision, contending that the hearing officer erred in finding in favor of the claimant on the direct result and good faith criteria for SIBs entitlement. The claimant asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant's compensable injury of June 17, 1998, resulted in an impairment rating (IR) of 15% or greater; that the claimant did not commute impairment income benefits; and that the qualifying periods for the quarters in issue were from August 5, 2002, through November 2, 2003. The SIBs criteria in issue are whether the claimant earned less than 80% of his average weekly wage (AWW) as a direct result of the impairment from the compensable injury during the relevant qualifying periods, and whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods. The claimant contended that he had no ability to work during the relevant qualifying periods as a result of his compensable injury.

Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. In the instant case, the hearing officer found that during the relevant qualifying periods the claimant was unemployed as a direct result of the impairment from the compensable injury and that the claimant met the good faith requirement under Rule 130.102(d)(4).

The hearing officer could conclude that there was a sufficient narrative report in evidence specifically explaining how the compensable injury caused a total inability to work. The hearing officer could also consider that a report relied on by the carrier to show an ability to work was written about three years before the qualifying periods in

issue. While the report of the designated doctor appointed to determine maximum medical improvement and IR was not in evidence, the parties stipulated that the claimant's compensable injury resulted in an IR of 15% or greater, and a carrier's peer review doctor explained in a report that the designated doctor had assigned the claimant a 20% IR for the claimant's skin conditions. The only issues at the CCH were the claimant's entitlement to SIBs for the 6th through the 10th quarters. There was no disputed issue regarding the extent of the claimant's compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence, and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL RAY OLIVER, PRESIDENT  
221 WEST SIXTH STREET  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Daniel Barry  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge